Court No.2

In the High Court of Uttaranchal at Nainital.

A.O. No. 207 of 2002.

1. Km. Farzana D/o late Shri Mahandi Hasan,
2. Shri Shameem S/o late Shri Mahandi Hasan,
3. Master Tauseem S/o late Shri Mahandi Hasan,
4. Master Shaukeen S/o late Shri Mahandi Hasan,
   All Residents of Village-Chand Chak, Gram Panchayat, Gram Panchayat Lakshmipur, Pargana Pachchwadoon, District-Dehradun.

.....Appellants/ Claimants.

5. Smt. Raisan W/o late Shri Mahandi Hasan,
R/o Village- Chand Chak, Gram Panchayat Lakshmipur, Pargana Pachchwadoon, District-Dehradun.

..... Appellant/Proforma Opp.party.

Versus

1. Shri Sushil Kumar S/o Shri Uttam Singh,
   R/o Rajoli, Horiwala, P.S. Sahaspur, District-Dehradun.
2. Shri Sumit Bhatia,
   R/o 3/9/4 Prem Nagar, Dehradun.
3. United India Assurance Company Ltd.,
   through its Branch Manager,
   9-D Astley Hall, Dehradun.

.....Respondents/Opp.parties.

Sri Lokendra Dobhal, learned counsel for the appellants.
Sri D.S. Patni, learned counsel for the respondent No.3.

Date: 23rd Aug.,2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the claimants/appellants against the judgment and order dated 18.05.2002 passed by Motor Accident Claims Tribunal/Addl.District Judge, Dehradun in Motor Accident Claim Case No. 64 of 2000.

2- Brief facts giving rise to this appeal are that on 23.03.2000 at about 9.00 A.M. when Mehandi Hasan was going in the house of Sri Jain to work as Mali bus No. UP 07-H-3055 dashed him on the Chakrata Road, Dehradun and the front wheel of the bus crushed him due to which Mehandi Hasan died on the spot. It was alleged that at the time of accident the deceased was aged 39 years and he was earning Rs. 4000/- per month from the Mali work. He was also a contractor. The claim petition was filed by the claimants who are the dependents of the deceased for awarding compensation to the tune of Rs. 7,70,500/-.

3- The Opp.party No. 1 did not deny the accident and stated that the offending truck was insured with the United Insurance Company at the time of accident. The Opp.party No.3- Insurance Company did not dispute the insurance of the offending bus with it.

4- The learned Tribunal after formulating necessary issues and considering the evidence adduced, allowed an award of Rs. 1,98,000/- only alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. The learned counsel for the claimants/appellants has challenged the impugned award only on the ground that the Tribunal has held the age of the deceased 42 years on the basis of post mortem report but fell into error in applying the multiplier of **12.** We find force in the contention of the learned counsel for the appellants. In this case after holding the age of the deceased 42 years, multiplier of **'15'** should have been applied as provided in second Schedule to Section 163-A of the Motor Vehicles Act. The Tribunal after deducting one-third has held the annual income of the deceased Rs. 16,000/-. Thus, the loss of dependency comes to Rs. 16,000X15=RS. 2,40, 000/-. The Tribunal has further

awarded an amount of Rs. 5000/- in the count of loss of consortium and loss of stated and Rs. 1000/- for funeral expenses. We are of the opinion, that the Tribunal has rightly awarded the aforesaid sums on these counts. Hence the total compensation comes to Rs. 2,46,000/- which is to be paid to the claimants.

5- Thus, the appeal is allowed partly. We modify the impugned award to the extent that the claimants shall be paid Rs. 2,46,000/- (Rupees two lac forty six thousand) only alongwith interest at the rate of 9% (nine per cent) per annum from the date of filing of the claim petition till the date of payment by the Opp.party No.3-United India Insurance Company Ltd.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh